company's president and the defendant contended that by this act the company had made the property its own. The trial court found that the execution of the mortgage constituted acceptance as a matter of law and dismissed the plaintiff's complaint. On appeal, *held*, that the complaint should not have been dismissed, as there was evidence on which a jury could have found that there was no intent to accept the machine absolutely. *Harrison* v. *Scott* (N. Y. 1911), 96 N. E. 755.

Acceptance, where no element of estoppel intervenes, is purely a question of the vendee's intent. This, of course, must be shown by evidence of all the facts and circumstances attending the transactions between vendor and vendee. *Noel & McGinnis* v. *Kauffman Buggy Co.* (Ky.), 106 S. W. 237; and from the acts of the vendee tending to indicate ownership, or inconsistent with an intention to reject the goods, *Woodward* v. *Emmons*, 61 N. J. L. 281; selling them as vendee's own, *Delamater* v. *Chappell*, 48 Md. 244; or mortgaging them, *Van Winkle* v. *Crowell*, 146 U. S. 42, as in the principal case. The decisions are not in harmony on the latter point. The principal case holds that the giving of a mortgage is not conclusive of acceptance as a matter of law. Squarely opposed to this doctrine is the case of *Liggett & Myers Tobacco Co.* v. *Collier*, 89 Iowa 144, 56 N. W. 417, in which the court says, "If defendant firm did not consider it their property why did they mortgage it? They thereby undertook to make a disposition of it absolutely inconsistent with any claim that they had not accepted the property." The better doctrine seems to be that such acts as resale, mortgage and use are strong evidence of an intention to accept the goods, and that the question is for the jury. *Jones* v. *Reynolds*, 120 N. Y. 213, 24 N. E. 279; *Marshall* v. *Ferguson*, 23 Cal. 66; *Wyler* v. *Rothschild*, 53 Neb. 566; *Phillips* v. *Ocmulgee Mills Co.*, 55 Ga. 633; *Bushel* v. *Wheeler*, 15 Q. B. 442; *Parker* v. *Wallis*, 5 El. & Bl. 21; REED, STAT. FRAUDS, § 261; *Waite* v. *McKelvy*, 71 Minn. 167; *Becker* v. *Holm*, 89 Wis. 86. In effect this is the position of the New York court in the principal case, for it attempts to distinguish the case before it, on the facts, from those holding that a mortgage of goods by vendee after delivery, is an acceptance as matter of law.

SALES—INDIANA BULK SALES ACT HELD CONSTITUTIONAL.—It is provided by Laws of Indiana 1909, p. 122, known as the Bulk Sales Act, that a transfer in bulk, or any part of the whole, of a stock of merchandise or fixtures pertaining to the conduct of a business, otherwise than in the ordinary course of trade, shall be void as against creditors of the seller, unless seller and purchaser shall at least five days before the sale make an inventory of the goods, the purchaser to receive from the seller a written list of the names and addresses of the seller's creditors with the indebtedness of each, and unless certain notice is given to the creditors of the purchaser. *Held*, that the act is constitutional. *Kirth-Krause Co.* v. *Cohen* (Ind. 1912), 97 N. E. 1.

The act in question is a substantial copy of the Michigan Bulk Sales Act, Michigan Public Acts 1905, p. 322, which act was in *Spurr* v. *Travis*, 145 Mich. 721, held not to violate the State constitution, and in *Musselman Grocery Co.* v. *Kidd*, 151 Mich. 478, was held not to violate the Fourteenth

Amendment to the Constitution of the United States. The latter decision was affirmed by the United States Supreme Court in *Kidd* v. *Musselman,* 217 U. S. 461, following *Lemieux* v. *Young,* 211 U. S. 489. The Indiana act was attacked on practically the same grounds as similar acts in other States have been assailed, *i. e.,* an undue exercise of the police power in restricting the power to contract, and also that such an act constitutes special legislation contrary to provisions of the State constitutions. The court in the principal case answers these objections in much the same way as in the Michigan cases above cited. See also the following cases holding Bulk Sales Acts to be constitutional: *Young* v. *Lemieux,* 79 Conn. 434; *Squire* v. *Tellier,* 185 Mass. 18; *Thorpe* v. *Pennock Mercantile Co.,* 99 Minn. 22, 108 N. W. 940; *Williams* v. *Fourth National Bank,* 15 Okla. 477; *Wilson* v. *Edwards,* 32 Pa. Sup. Ct. 295; *Neas* v. *Borches,* 109 Tenn. 398; *McDaniels* v. *Connelly,* 30 Wash. 549. For a review of Bulk Sales Acts, see 7 MICH. L. REV. 504, showing that in 30 States of the Union, and also in the District of Columbia, such acts are in operation after having been tested in the courts as to their constitutionality. It is proper to say that in the cases of *Black* v. *Schwartz,* 27 Utah 387; *Miller* v. *Crawford,* 70 Ohio St. 207; *Wright* v. *Hart,* 182 N. Y. 330; *Off* v. *Morehead,* 235 Ill. 40, statutes quite similar to the Michigan and Indiana acts were held unconstitutional, but, as pointed out in the principal case, these cases were rendered previous to the decision in the United States Supreme Court in *Lemieux* v. *Young supra.* Since the above decisions, Utah and New York have reenacted laws modified so as to meet the decisions while the Ohio act had a penal clause attached and therefore was distinguishable from the one in question. As for Illinois, the courts of that State refuse to heed the decisions of other States, holding the act unconstitutional on the ground that it is class legislation and in restraint of freedom of contract. *Off* v. *Morehead, supra.* For an interpretation of the Michigan Act, see 10 MICH. L. REV. 247.

WILLS—CONTRACT TO DEVISE OR BEQUEATH—SPECIFIC PERFORMANCE.—Plaintiff and her husband agreed that upon the predecease of either the survivor should have the entire estate of decedent. Accordingly, they executed reciprocal wills which remained unchanged and unrevoked until plaintiff's husband, four days before his death, executed another will. Plaintiff prayed for specific performance of the contract and that she be decreed the owner of deceased's estate. Upon demurrer, *held,* that the plaintiff by living up to her agreement was entitled to a specific performance of the contract, as against the heirs, executors, etc. *Brown* v. *Webster et al.* (Neb. 1912), 134 N. W. 185.

Unquestionably an agreement on valid consideration to devise property is as binding as any other obligation. While the revocatory nature of a will may prevent any enforcement during the contractor's life time, yet no excuse is furnished thereby for the breach of the contract. SCHOULER, WILLS, § 453. *Dufour* v. *Pereira,* 1 Dick. 419; *Parsell* v. *Stryker,* 41 N. Y. 480; *Bruce* v. *Moon,* 57 S. C. 60. If an adequate relief is unobtainable at law, such a contract is valid in equity even to the extent of decedent's entire estate. *Sharkey* v. *McDermott,* 91 Mo. 647. This may be in effect specific performance, *Jaffee*